Supreme Court, U.S.
FILED
JAN 14 2002
CLERK

(3)

No. 01-707

IN THE

SUPREME COURT OF THE UNITED STATES

SUZANNE HANSARD,

Petitioner,

v.

REDDING RANCHERIA,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeal of the State of California for the Third Appellate District

---

REPLY BRIEF

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Counsel of Record

31 pp

Petitioner Suzanne Hansard respectfully submits this reply brief in order to challenge certain representations made in respondent's brief in opposition and to question the standing of Rapport & Marston to represent respondent before this court.

On page 2 of respondent's brief, respondent asserts, "While petitioner filed a petition for review in the California Supreme Court, she did not serve Redding Rancheria's attorney of record with a copy of the petition." This misleads the court. The true fact is that on December 8, 2000, Rapport & Marston withdrew as attorney of record for Redding Rancheria (Win River Casino) and the firm of Hollingshead, Nardine, Bennett & Jackson and Stephen J. Nardine were substituted in the place and stead of Rapport & Marston as attorneys for respondent Redding Rancheria. See Exhibit A hereto. Petitioner Suzanne Hansard filed her petition for review in the California Supreme Court on May 10, 2001. See Exhibit B hereto. At the same time, petitioner served respondent's attorneys of record, Hollingshead, Nardine,

Bennett & Jackson with a copy of the petition for review. See Exhibit B. Moreover, in a Further Case Management Conference Statement which was served and filed on June 1, 2001, Hollingshead, Nardine, Bennett & Jackson continued to represent itself as attorneys of record for Win River Casino, an entity it considers indistinguishable from Redding Rancheria. See Exhibit C hereto. See, also, page 1 of respondent's brief in opposition.

Petitioner Suzanne Hansard has never been served with any substitution of counsel or association of counsel since that served on petitioner on December 8, 2000, in which Hollingshead, Nardine, Bennett & Jackson were substituted as counsel of record for respondent. In view of these facts, petitioner questions the standing of Rapport & Marston to appear on behalf of respondent in this matter.

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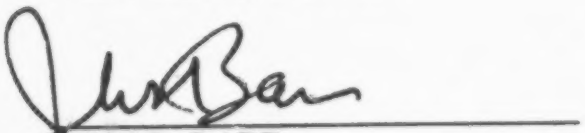
Based on the above and on petitioner's opening brief, petitioner Suzanne Hansard respectfully requests that her petition be granted.

Respectfully submitted,

Dated: January 11, 2002



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

SUZANNE HANSARD	) Unlimited
	) Case No. 139088
Plaintiff,	)
vs.	) SUBSTITUTION
	) OF COUNSEL
WIN RIVER CASINO; and DOES 1 thrugh [sic] 20, Inclusive	)
	)
Defendant.	)

Holingshead, Nardine, Bennett & Jackson and Stephen J. Nardine are hereby substituted as counsel of record for defendant Win River Casino, and David J. Rapport and Rapport & Marston hereby withdraw as attorney of record in this Court for said defendant.

Please address all further pleadings and communications as follows:

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DATD [sic]: December 8, 2000

RAPPORT AND MARSTON

By: /s/_____
David J. Rapport

DATED: December __, 2000

HOLINGSHEAD, NARDINE,
BENNETT & JACKSON

By: /s/_____
Stephen J. Nardine

Supreme Court Case No.

IN THE

SUPREME COURT OF CALIFORNIA

REDDING RANCHERIA,

Petitioner,

v.

SHASTA COUNTY SUPERIOR COURT,

Respondent

SUZANNE HANSARD,

Real Party in Interest.

After a Decision of the Court of Appeal, Third Appellate District
Case No. C036723

PETITION FOR REVIEW

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Supreme Court Case No.

IN THE

SUPREME COURT OF CALIFORNIA

REDDING RANCHERIA,

Petitioner,

v.

SHASTA COUNTY SUPERIOR COURT,

Respondent,

SUZANNE HANSARD,

Real Party in Interest.

PETITION FOR REVIEW

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INTRODUCTION

By this petition, Real Party in Interest, SUZANNE HANSARD, frankly seeks reversal of the decision of the Court of Appeal for the Third Appellate District in Redding Rancheria v. Superior Court (2001) 88 Cal.App.4th 384. The court held that "an Indian tribe and its commercial entity are immune from an ordinary tort suit arising outside of Indian country," relying largely on Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc. (1998) 523 U.S. 751, 118 S.Ct. 1700, 140 L.Ed.2d 981 (Kiowa Tribe). But, in so holding, the Court of Appeal went well beyond the actual holding of Kiowa Tribe and **created** a new immunity. This new immunity says a tribe or a tribal entity is not answerable for an ordinary tort committed by the tribe or entity off Indian land while engaged in recreational activity having

nothing whatsoever to do with, or having any impact on, tribal self-governance or tribal self-sufficiency.

The actual holding of Kiowa Tribe was that, "Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." As the dissent in Kiowa Tribe pointed out, however, even this limited holding extended the doctrine of tribal immunity well beyond the contours that had until that time existed, pointing out that, "in none of our cases have we applied the doctrine to purely off-reservation conduct." Even the majority recognized that a consideration of the harm that might befall the victim of a tort committed by a tribe or tribal entity off the reservation, as well as other considerations, suggested "a need to abrogate tribal immunity, at least as an overarching rule." (Kiowa Tribe, at 118 S.Ct. 1704-1705.) No sound reason or public policy exists for extending Kiowa Tribe beyond its actual holding, that is, tribal immunity for off-reservation contracts. No sound reason or public policy exists for a California court to **create** a new tribal immunity for off-reservation torts committed in the course of conduct which does not affect either tribal self-governance or tribal self-sufficiency. On the other hand, sound public policy

favors holding a tribe and a tribal entity responsible for its torts committed off reservation during the course of recreational or other non-governmental activity.

PETITION FOR REVIEW

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Real Party in Interest, Suzanne Hansard (hereinafter, Real Party or Hansard), respectfully petitions for review of the decision by the Court of Appeal for the Third Appellate District in Redding Rancheria v. Superior Court (2001) 88 Cal.App.4th 384. A copy of the decision is attached hereto as Exhibit A.

ISSUE TO BE PRESENTED

Should a California court enlarge Indian tribal sovereign immunity beyond the boundaries established by the United States Supreme Court in Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc. (1998) 523 U.S. 751 (118 S.Ct. 1700, 140 L.Ed.2d 981) (hereinafter, Kiowa Tribe), and thereby create a new rule of tribal immunity for a tribe which tortiously injures a state citizen

while the tribe is off the reservation engaging in recreational activities?[1]

WHY REVIEW SHOULD BE GRANTED

Indian gaming casinos are ubiquitous across California. It is to be anticipated that the tribes that own and operate these casinos will, from time to time and on special occasions such as Christmas, host parties and recognition banquets for its casino's employees, as happened in this case. It is also to be anticipated that the tribe will select an establishment that is away from the employees' ordinary work place for these parties and banquets. From time to time, one may anticipate that a non-Indian will be injured by a tort committed by the tribe or tribal entity hosting these parties or banquets, as happened here. If the decision of the Court of Appeal is allowed to stand, California will have created, by judge-made law, an underclass of citizens who

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[1] The Court of Appeal also impliedly found that Win River Casino was an arm of the tribe. The only evidentiary support for this implied finding found in the record is the declaration of the tribe's attorney, which merely states, "The tribe owns and operates the Win River Casino which is located within the exterior boundaries of the Tribe's Reservation in Shasta County." That declaration is found as Exhibit E to Petitioner's Petition for Writ of Mandate, memorandum of points and authorities and exhibits in support thereof, filed in the Court of Appeal for the Third District. Real Party has elected not to raise this issue in order to focus more fully on this attempt to limit Kiowa Tribe to its actual holding.

may not recover the full measure of their damages by reason of the immunity of the tribe or tribal entity from a suit in tort, even though the tort was committed outside Indian country and even though the tort victim may not have known he or she was dealing with a tribe or knew anything about Indian immunity. The creation of such an underclass flies in the face of constitutional equal protection. (Cal. Const., Art. I, §7.) This court can avoid such an unconstitutional and unfair result by reversing the decision of the Court of Appeal and limiting the application of Kiowa Tribe to its actual holding, that is, tribal immunity for suits on contracts. Governments, like individuals, should be liable for their torts. Nowhere should this be more true than in the case of a tort committed by a tribe or tribal entity outside Indian country.

GROUNDS FOR REVIEW

This case raises an important question of law affecting the entire State of California. If the Court of Appeal decision in this case is allowed to stand, California will have created an underclass of citizens comprised of all those non-Indians who are injured by the tort of an Indian tribe or tribal entity committed off-reservation. The tort victims in this second-class group of citizens may be thwarted in recovering the full measure of their damages by

reason of Indian tribal immunity, whereas the tort victim injured in the banquet room next door by the tort of one who is not a tribe or tribal entity will not be similarly limited in recovering his or her damages.

In holding that an Indian tribe and its commercial entity are immune for off-reservation torts, the Court of Appeal went well beyond the actual holding of Kiowa Tribe. The Court of Appeal, by judge-made law, has created a new immunity for off-reservation torts committed by a tribe or tribal entity that has never been recognized before. The Court of Appeal's decision has broad and obvious implications for all members of the general public who might be injured by an off-reservation tort of an Indian tribe or tribal entity without even recognizing that he or she is dealing with an Indian tribe and does not know of tribal immunity. On the other hand, the Court of Appeal's decision does nothing to foster off-reservation responsibility by tribes and tribal entities and, in fact, has the opposite effect.

STATEMENT OF THE CASE

Suzanne Hansard, as Real Party in Interest, files this Petition for Review of the decision of the Court of Appeal for the Third District in Redding Rancheria v. Superior Court

(2001) 88 Cal.App.4th 384, on the grounds that said decision affords relief in the form of an immunity not recognized in Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., supra, 523 U.S. 751, 118 S.Ct. 1700, 140 L.Ed.2d 981, and, in excess of the court's power, creates a new tribal immunity for off-reservation torts where none previously existed.

Statement of Facts and Procedural History

On December 16, 1999, Suzanne Hansard, Real Party in Interest, filed a complaint for damages in Shasta County Superior Court against the Win River Casino, alleging causes of action based on assault and battery and negligence. (Suzanne Hansard v. Win River Casino, Shasta County Superior Court Case No. 139088, a true and correct copy of which is attached hereto and incorporated herein as Exhibit B.) In her complaint, Hansard alleged that, on December 18, 1998, while she was working at the Holiday Inn in Redding, California, as a bartender at a Christmas party organized for the employees of the Win River Casino, she was struck on the head by a gift box thrown by one of the casino's employees, resulting in injury. The Holiday Inn is not on Indian property.

Redding Rancheria is a federally-recognized Indian Tribe. Redding Rancheria owns and operates the Win River Casino, which is located within the exterior boundaries of the Tribe's Reservation in Shasta County, California.

On January 3, 2000, the Tribe was served with Hansard's summons and complaint.

On August 11, 2000, the Tribe filed a motion to quash service of summons of the complaint and supporting papers, claiming that the Tribe's sovereign immunity extended to Win River Casino and to this tortious conduct.

At a hearing held on September 11, 2000, the Shasta County Superior Court denied the Tribe's motion.

On October 11, 2000, the Tribe filed, with the Court of Appeal for the Third District, a petition for writ of mandate pursuant to Code of Civil Procedure section 418.10.

After interim proceedings in the Court of Appeal for the Third District and in the California Supreme Court, the Court of Appeal issued an alternative writ on December 22, 2000.

The court heard oral argument on March 20, 2001. On April 6, 2001, the Court of Appeal for the Third District handed down its decision in Redding Rancheria v. Superior Court (2001) 88 Cal.App.4th 384, holding that "an Indian

tribe and its commercial entity are immune from an ordinary tort suit arising outside of Indian country."

ARGUMENT

I. THE COURT OF APPEAL'S DECISION EXCEEDS THE SCOPE OF THE INDIAN TRIBAL IMMUNITY RECOGNIZED AND APPROVED IN KIOWA TRIBE OF OKLAHOMA v. MANUFACTURING TECHNOLOGIES, INC. (1998) 523 U.S. 751, AND SHOULD BE REVERSED.

Relying largely on Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc. (1998) 523 U.S. 751, 118 S.Ct. 1700, 140 L.Ed.2d 981 (hereinafter, Kiowa Tribe), the Court of Appeal for the Third District held, "[A]n Indian tribe and its commercial entity are immune from an ordinary tort suit arising outside of Indian country." The Court of Appeal found the tribal activity to be immunized whether or not tribal goals or tribal self-government was implicated. But, the Kiowa Tribe court's holding was more restrictive in defining the scope of a tribe's immunity. The Kiowa Tribe court held: "Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." Here, the Court of Appeal decision goes well beyond the scope of the tribal immunity recognized by

Kiowa Tribe and is not supported by the actual holding of Kiowa Tribe. On the other hand, other, good Supreme Court law supports a decision of this court not to extend tribal immunity for off-reservation conduct beyond that actually held to apply in Kiowa Tribe.

Prior to Kiowa Tribe, it was good law that, "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the state." (Mescalero Apache Tribe v. Jones (1973) 411 U.S. 145, 148-149, 93 S.Ct. 1267, 1270, 36 L.Ed.2d 114 (hereinafter, Mescalero Apache Tribe).) Unless Kiowa Tribe is expanded beyond the confines of its actual holding, the rule of Mescalero Apache Tribe remains good law.

As the majority in Kiowa Tribe admit, the doctrine of Indian tribal immunity is judge-made law. (Kiowa Tribe, at 523 U.S. 754 and 759, 118 S.Ct. 1703 and 1705.) But, as Justice Stevens pointed out in his dissent in Kiowa Tribe, the two earliest Supreme Court opinions cited by the majority as the genesis of the doctrine of tribal sovereign immunity, Turner v. United States (1919) 248 U.S. 354, 39 S.Ct. 109, 63 L.Ed. 291 and United States v. United States Fidelity &

Guaranty Co. (1940) 309 U.S. 506, 60 S.Ct. 653, 84 L.Ed. 894 (USF&G), both arose out of conduct that occurred on Indian reservations. (Kiowa Tribe, at pp. 761-762, dissenting opinion of Stevens.) In Supreme Court cases after USF&G, the Supreme Court made it clear that the States have legislative jurisdiction over the off-reservation conduct of Indian tribes, and even over some on-reservation activities. (Kiowa Tribe, at 523 U.S. 762, 118 S.Ct. 1706.) In Puyallup Tribe, Inc. v. Department of Game of Wash. (1977) 433 U.S. 165, 175-176, 97 S.Ct. 2616, 2622-2623, 53 L.Ed.2d 667, the Supreme Court rejected the Puyallup Tribe's claim that its tribal immunity precluded the state of Washington from regulating fishing activities on its reservation. As the dissent in Kiowa Tribe observed, since the Puyallup Tribe decision and up until the Kiowa Tribe decision, the Supreme Court had considered the doctrine of tribal sovereign immunity only in considering controversies arising on reservation territory. (Kiowa Tribe, at 523 U.S. 763, 118 S.Ct. 1707.) Prior to Kiowa Tribe, the Supreme Court had never applied the doctrine of tribal sovereign immunity to conduct which occurred entirely off-reservation. (Kiowa Tribe, at 523 U.S. 764, 118 S.Ct. 1707.) In making this point, Justice Stevens

stated in his dissenting opinion at 523 U.S. 764, 118 S.Ct. 1707:

> "In sum, we have treated the doctrine of sovereign immunity from judicial jurisdiction as settled law, but in none of our cases have we applied the doctrine to purely off-reservation conduct. Despite the broad language used in prior cases, it is quite wrong for the Court to suggest that it is merely following precedent, for we have simply never considered whether a tribe is immune from a suit that has no meaningful nexus to the tribe's land or its sovereign functions. Moreover, none of our opinions has attempted to set forth any reasoned explanation for a distinction between the States' power to regulate the off-reservation conduct of Indian tribes and the States' power to adjudicate disputes arising out of such off-reservation conduct."

Unless Kiowa Tribe is expanded beyond its actual, true holding, Mescalero Apache Tribe remains good law. When a tribe or tribal entity goes beyond the reservation boundaries, the tribe or tribal entity should be held subject to non-discriminatory state law otherwise applicable to all citizens of the State. (Mescalero Apache Tribe, at 411 U.S. 148-149, 93 S.Ct. 1270.) Mescalero Apache Tribe provides good authority for a decision by this court refusing to extend

or expand Kiowa Tribe beyond its actual holding which is limited to tribal immunity from suits on contracts, whether made on or off the reservation.

II. IN EXPANDING THE BOUNDARIES OF TRIBAL SOVEREIGN IMMUNITY BEYOND THE ACTUAL HOLDING OF KIOWA TRIBE, THE COURT OF APPEAL HAS ENGAGED IN CREATING LAW, A FUNCTION NOT WITHIN ITS POWERS.

In part II of his dissenting opinion in Kiowa Tribe, Justice Stevens provides all of the reasoning and legal authority that this court needs to justify a decision refusing to expand the doctrine of tribal sovereign immunity for off-reservation conduct beyond the actual holding of Kiowa Tribe, itself. The undersigned does not believe that he can improve on Justice Stevens' argument. Justice Stevens observed at 523 U.S. 764-766, 118 S.Ct. 1708:

> "Three compelling reasons favor the exercise of judicial restraint.
>
> First, the law-making power that the Court has assumed belongs in the first instance to Congress. The fact that Congress may nullify or modify the Court's grant of virtually unlimited tribal immunity does not justify the Court's performance of a legislative function. The Court is not merely announcing a rule of comity for federal judges to observe; it is announcing a

rule that pre-empts state power. The reasons that undergird our strong presumption against construing federal statutes to pre-empt state law, see, e.g. Cipollone v. Liggett Group, Inc. (505 U.S. 504, 516, 518, 112 S.Ct. 2608, 2617, 120 L.Ed.2d 407 (1992), apply with added force to judge-made rules.

In the absence of any congressional statute or treaty defining the Indian tribe's sovereign immunity, the creation of a federal common-law 'default' rule of immunity might in theory be justified by federal interests. By setting such a rule, however, the Court is not deferring to Congress or exercising 'caution,' ante, at 1705 – rather, **it is creating law** [emphasis added]. The Court fails to identify federal interests supporting its extension of sovereign immunity – indeed, it all but concedes that the present doctrine lacks such justification, ante, at 1704 – and completely ignores the State's interests. Its opinion is thus a far cry from the 'comprehensive pre-emption inquiry in the Indian law context' described in Three Affiliated Tribes that calls for the examination of 'not only the congressional plan, but also the nature of the state, federal, and tribal interests at stake...' 476 U.S., at 884, 106 S.Ct., at 2310 (quoting White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 145, 100 S.Ct. 2578, 2584-2585, 65 L.Ed.2d 665 (1980).) Stronger

reasons are needed to fill the gap left by Congress.

Second, the rule is strikingly anomalous. Why should an Indian tribe enjoy broader immunity than the States, the Federal Government, and foreign nations? As a matter of national policy, the United States has waived its immunity from tort liability and from liability arising out of its commercial activities. See, 28 U.S.C. §§1346(b), 2674 (Federal Tort Claims Act); §§1346(a)(2), 1491 (Tucker Act). Congress has also decided in the Foreign Sovereign Immunities Act of 1976 that foreign states may be sued in the federal and state courts for claims based upon commercial activities carried on in the United States, or such activities elsewhere that have a 'direct effect in the United States.' §1605(a)(2). And a State may be sued in the courts of another State. Nevada v. Hall, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979). The fact that the States surrendered aspects of their sovereignty when they joined the Union does not even arguably present a legitimate basis for concluding that the Indian tribes retained – or, indeed, ever had – any sovereign immunity for off-reservation commercial conduct.

Third, the rule is unjust. This is especially so with respect to tort victims who have no opportunity to negotiate for a waiver of

> sovereign immunity; yet nothing in the Court's reasoning limits the rule to lawsuits arising out of voluntary contractual relationships. Governments, like individuals, should pay their debts and should be accountable for their unlawful, injurious conduct."

Even the majority in Kiowa Tribe doubted the wisdom of continuing in effect the doctrine of tribal sovereign immunity, let alone expanding its scope. The Kiowa Tribe court observed at 523 U.S. 758, 118 S.Ct. 1704-1705:

> "There are reasons to doubt the wisdom of perpetuating the doctrine. At one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachment by States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance. This is evident when tribes take part in the Nation's commerce. Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. See, Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973); Potawatomi, supra; Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996). In this economic context, immunity can

> harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims. [¶] These considerations might suggest a need to abrogate tribal immunity, at least as an overarching rule..."

Nevertheless, the Kiowa Tribe court deferred to congress the issue of the continued existence of tribal immunity and/or its scope, even though the Court admitted that the entire doctrine of tribal immunity was one created by the Court. (Kiowa Tribe, at 523 U.S. 758, 759, 118 S.Ct. 1705.)

The present state of affairs regarding tribal immunity strongly counsels judicial restraint. This court should exercise that restraint by refusing to extend and expand the doctrine of tribal immunity beyond that of the actual holding of Kiowa Tribe. No sound policy reason exists for absolving a tribe or tribal entity from the consequences of its tortious conduct committed outside the boundaries of Indian country, especially when that conduct occurs in the course of activity that has no impact on tribal self-governance or tribal self-sufficiency. No sound policy exists for creating a second class of citizens who may be denied the full measure of recovery when they are injured by torts committed outside

Indian country by a tribe or tribal entity, especially when the victim did not know he or she was dealing with a tribe and did not know about tribal immunity. Any expansion or extension of the doctrine of tribal immunity to immunize off-reservation torts committed by a tribe or tribal entity raises grave and fundamental constitutional equal protection questions. This court should boldly refuse to expand or extend the doctrine of tribal immunity beyond the actual holding of Kiowa Tribe.

CONCLUSION

For all the reasons stated above, Real Party, Suzanne Hansard, respectfully requests that this Court reverse the decision of the Court of Appeal for the Third District in Redding Rancheria v. Superior Court (2001) 88 Cal.App.4th 384.

Dated: May 10, 2001

DUGAN BARR & ASSOCIATES

By: /s/
J. MICHAEL FAVOR

Attorneys for Real Party in Interest,
SUZANNE HANSARD

(sab)

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the County of Shasta, State of California. I am over the age of 18 years and not a party to the within action; my business mailing address is Post Office Box 994390, Redding, California 96099-4390.

I am familiar with this firm's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mail box after the close of the day's business.

__XX__ On the date indicated below, I served the document(s) designated below on all parties in said action by placing a true copy thereof in a sealed envelope in the designated area for out-going mail addressed as set forth below:

PETITION FOR REVIEW

_____On the date indicated below, I personally served the document(s) designated below by delivering a true copy thereof to the person(s) and at the address(es) set forth below:

_____On the date indicated below, I served the document(s) designated below by transmitting a true copy thereof via Fax to the person(s) and at the Fax number(s) set forth below:

Stephen J. Nardine
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Attorneys for Petitioner

Court of Appeal
Third Appellate District
900 N. St., Rm. 400
Sacramento, CA 95814

Clerk of the Court
Shasta County Superior Court
1500 Court Street
Redding, CA 96001

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 10th day of May, 2001, at Redding, California.

/s/ STACY BELZER

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Attorneys For WIN RIVER CASINO; GARY HAYWARD, STEVEN HAYWARD, and MICHAEL HAYWARD

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

SUZANNE HANSARD, Plaintiff, vs. WIN RIVER CASINO, and DOES 1 to 20, inclusive, Defendants.	Case No. 139088 **FURTHER CASE MANAGEMENT STATEMENT** Date: June 11, 2001 Time:1:30 p.m. Dept: 4

THE UNDERSIGNED HEREBY SUBMITS THE FOLLOWING FURTHER CASE MANAGEMENT CONFERENCE STATEMENT:

1. Representations.

a) Name and address of counsel:

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Redding, CA 96099-4390

Stephen J. Nardine (SBN 137658) — For Defendants
HOLLINGSHEAD, NARDINE, BENNETT & JACKSON
P.O. Box 293328
Sacramento, CA 95829

b) Trial attorney:

Stephen J. Nardine will try this case for Defendants. Plaintiff to advise of their trial attorney.

c) Clients:

Win River Casino	Defendant
Gary Hayward	Defendant
Steven Hayward	Defendant
Michael Hayward	Defendant

d) Not applicable to these parties.

2. Neutral Statement of the Case:

Defendant defers to the allegations contained in plaintiff's neutral statement for purposes of this conference only.

3. Issues:

All factual allegations are in dispute.

Further, a motion to quash based on sovereign immunity was filed on behalf of Win River Casino (Redding Rancheria), which was denied by the trial court. A writ of mandamus, appealing the trial court's order was filed with the Court of Appeal, which was summarily denied. This decision was appealed to the California Supreme Court, which has remanded the matter back to the Court of Appeal for briefing, a hearing and a decision. The Court of Appeal granted the writ. Plaintiff's counsel has requested a review.

4. At-Issue Statement:

This case is not at-issue. See statements in section number 3, above.

5. Case Management:

It is requested that this case be designated as a Class III class to allow the upper courts to resolve the sovereign immunity issues of this case. Alternatively, it is requested that this action be stayed pending the appeal. It is in the court's and the parties interests to have this issue resolved first, as action by the appellate court may either completely resolve this case, or instruct the court and parties concerning the issues of the case.

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6. Pre-Trial Activities and Requirements.

a) Law and Motion Matters:

None known at this time.

b) Bifurcation:

None known at this time.

c) Discovery:

Depositions of individual defendants have been taken. Deposition of plaintiff and witnesses remain to be taken. Written discovery will be propounded in the near future. Expert discovery, if any, to be done per code.

d) Expert Witnesses:

Unknown at this time.

e) Stipulations:

None.

f) Motions in Limine:

This party will file Motions in Limine at the appropriate time per Shasta County Local Rules.

7. Mediation/Judicial Arbitration:

a) Do the parties stipulate to binding arbitration?

No.

b) Do the parties stipulate to non-binding arbitration?

No.

c) Does the plaintiff elect arbitration?

Unknown.

d) Does the plaintiff contend that the amount in controversy exceeds $50,000?

Defendant defers to the statements contained in plaintiff's Case Management Conference Statement for purposes of this conference only.

e) Do you agree that after arbitration general discovery may remain open up to 30 days before trial?

Yes.

f) Do you agree to court-annexed mediation before the Hon, [sic] Halpin, retired?

Yes.

g) Non-binding arbitration or mediation may be helpful in the resolution of this matter. However, no alternative dispute resolution method should be assigned until the upper courts have made a final determination.

8. Trial:

a) Length of Trial:

5-7 days are anticipated for this trial. These parties reserve the right to a trial by jury.

b) Available trial dates:

1)

2)

3)

4)

9. Other matters:

Plaintiff has agreed to set aside the default of the individual defendants. As soon as the stipulation is filed, and the order approved by the Court, an appearance will be made on behalf of these parties.

This case is not prepared for trial, and it is requested that trial setting take place at some time in the future after appellate issues are resolved and discovery is completed.

DATED: June 1, 2001

HOLLINGSHEAD, NARDINE, BENNETT & JACKSON

By: /s/
STEPHEN J. NARDINE
Attorneys for Defendants

RE: Hansard v. Win River Casino, et al.
Shasta County Superior Court, Case Number: 139088
PROOF OF SERVICE BY MAIL — C.C.P. § SECTIONS 1013A, 2015.5

I declare that I am employed in the County of Placer, California. I am over the age of eighteen years and not a party to the within cause. My business address is P.O. Box 293328, Sacramento, California 95829.

On the date last written below, I caused to be served the within **FURTHER CASE MANAGEMENT CONFERENCE STATEMENT** on the parties in said cause as follows:

Dugan Barr
J. Michael Favor
DUGAN BARR & ASSOCIATES
P.O. Box 994390
Redding, CA 96099-4390
530-243-8008
FAX: 530-243-1648

XXX BY MAIL: I placed each such sealed envelope, for collection and mailing at Rocklin, California, following ordinary business practices. I am readily familiar with the practices for the processing of said mail, which is deposited in the United States Postal Service the same day as it is placed for processing.

____ BY PERSONAL SERVICE: I caused each such envelope to be delivered by hand to the addressee(s) noted in this Proof of Service.

____ OVERNIGHT SERVICE: I caused each such envelope to be delivered by Overnight/Express Mail Deliver

to the addressee(s) noted in this Proof of Service.

_____ BY FACSIMILE: I caused said document to be transmitted by facsimile machine to the number indicated after the address noted or the addressee on the facsimile cover sheet.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed June 1, 2001, at Rocklin, California.

/s/_____
DEBORAH L. DONEGAN